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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,199	05/31/2001	James M. Kain	20341-67618	9889

7590

01/05/2006

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EXAMINER

EDELL, JOSEPH F

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/871,199

Applicant(s)

KAIN, JAMES M.

Examiner

Joseph F. Edell

Art Unit

3636

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 4-9 and 11-31.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.

ANTHONY D. BARFIELD
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that the seat assembly of Markel fails to anticipate proposed amended claims 11 and 12 because Markel fails to disclose a fastener arranged to extend through the fastener apertures formed in the ridge of the seat back and the upper wing of the flange of the support mount. However, claim 11 does not recite a ridge of the seat back wherein the fastener extending through apertures therein. Claim 11 merely requires the seat assembly have a flange formed to include a lower wing and a second fastener being coupled to the lower wing. The support mount 14 has four apertures coupled to fasteners 26 (see Figures 4 and 7). The flange of Markel is formed from the guide blocks 18,20 and the plate 22 wherein the flange has upper and lower wings. The lower wing of the flange has two fasteners and two apertures extending below the arm. With respect to claim 12, Examiner reasonably interprets the plate 16 of Markel to meet the limitation of the ridge of the seat back wherein the ridge lies adjacent to an upper wing of the flange. The upper wing has two fasteners and two apertures arranged to lie above the top surface of the arm.

With respect to the rejection of claims 6-8, 10, and 12 as being unpatentable over Lemmeyer et al. in view of Rowland, Applicant argues that there is insufficient motivation to combine the references and the Rowland fails to teach a wing with inner and outer flanges or fasteners extending through the inner and outer flanges. The Office Action mailed 17 October 2005 specifies motivation to modify the seat assembly in view of the teachings of Rowland that the upper wing of the support mount provides a channel wherein its length mates exactly with the seat back to support the armrest along a vertically planar length of the seat back that lies above the armrest. In response to Applicant's argument against Rowland individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this instance, one of ordinary skill would have been motivated to make the modification based on the teachings in Rowland to have an upper wing with a channel above the armrest that is fastened to the seat back. The teachings of the fasteners and inner and outer flanges are taught in Lemmeyer et al.

With respect to the armrest of Mitchell, Applicant appears to not understand the teachings of Mitchell. The armrest of Mitchell has a first fastener (see Diagram A below) and a load support panel that engages a ridge of the seat back to block pivotable movement of the armrest downward about a pivot axis established by the first fastener. See the previous Office Action for motivation to further modify the seat assembly of Lemmeyer et al. Diagram A sets forth the relationship of the load support panel and the flanged wings of the armrest such that the combination regarding claims 13 and 25 is apparent.

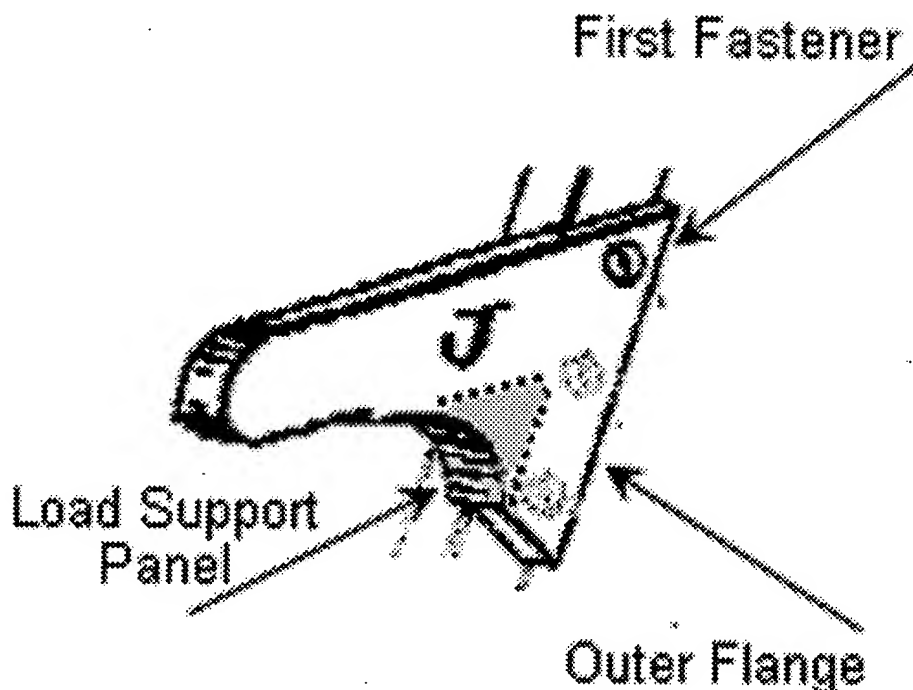


Diagram A - Annotated Figure 1 of Mitchell